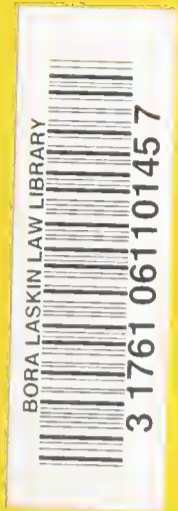




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**CONTRACTS**  
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Professor Angela Fernandez  
Section II & Small Group B  
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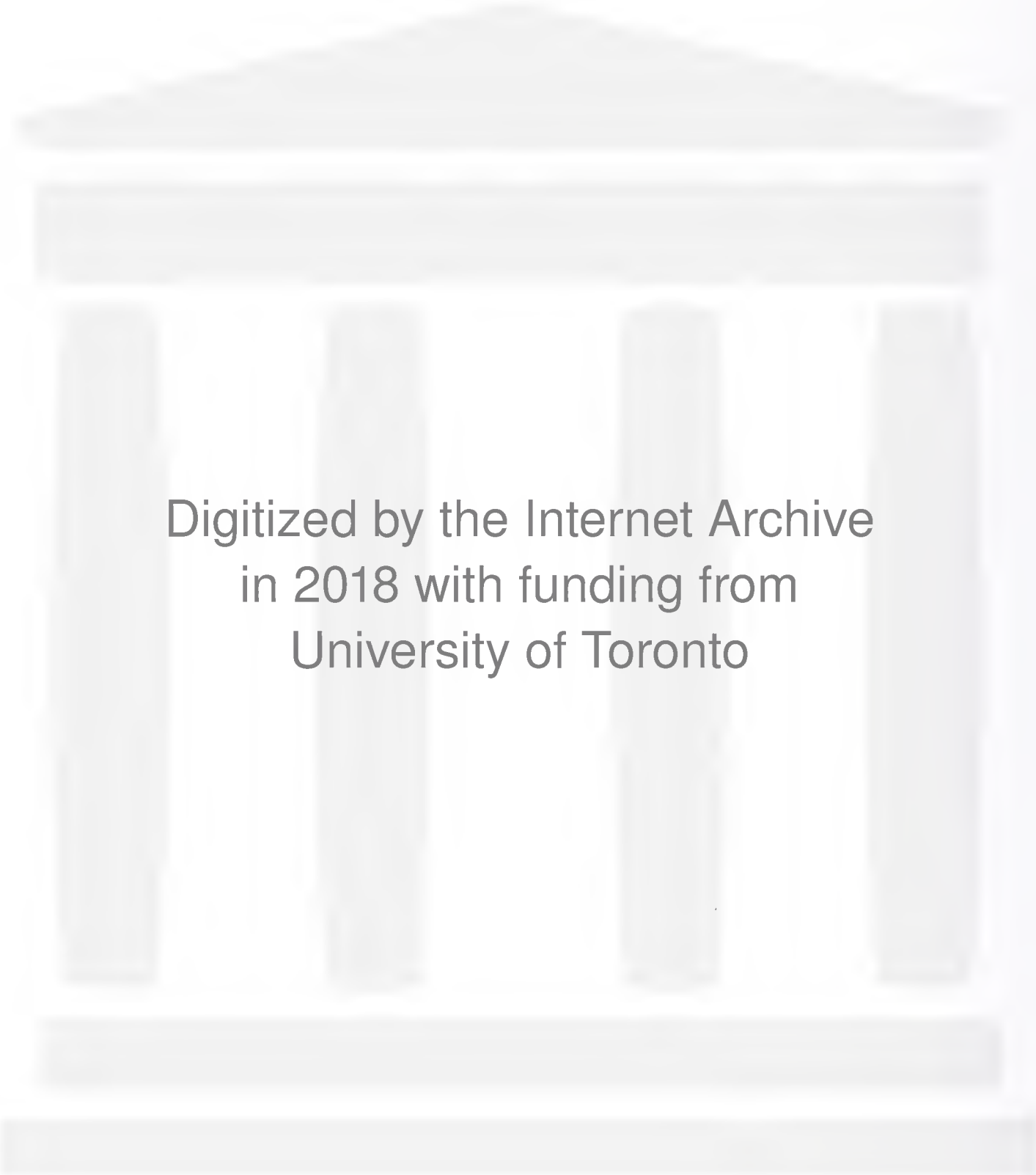
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## Case Brief Format

NAME OF THE CASE (COURT, DATE)

**FACTS:**

**ISSUE:** (Frame this as a question)

**HELD:** (Brief answer to the question)

**RATIO:** (The reasoning of the majority judgment)

**DISSENT:** (If there is one)

## Case Brief Sample

*Bollenback v. Continental Casualty Company* (Oregon S.C., 1965) (27-32)

**FACTS:** Pl took out a K of insurance in 1954. Pl/insured tries to make a claim in 1963 of \$107.33. Def/Insurer does not respond for some time and then mistakenly claims that the policy lapsed for non-payment of premium in 1959. Pl/insured receives no answer to letters requesting information of his payments. Pl/Insured files this suit, rescinding the K and requesting all sums paid under the policy (\$2,166.50).

**ISSUE:** Can the pl have restitution bc of wrongful repudiation of the K by the def? Or is the pl confined to damages?

**HELD:** Pl can have restitution but minus benefit received.

**RATIO:** The pl did receive insurance protection from 1954 to 1959 – or at least there is no proof that a claim made before 1959 would not have been met – there are “no facts alleged which show such an intentional misrepresentation” (i.e. “total failure of consideration”) (*Watson v. Massachusetts Mutual Life Insurance*). Pl would be overcompensated by having all premiums since 1954 repaid. Pl should, however, have those since 1959 repaid, since he was not receiving the benefit of the K during this time.

“The purpose of rescission and restitution is to return the parties as near as possible to their respective positions prior to the formation of the contract ... The purpose of an action for damages is to put the injured party as near as possible to the position where he would have been had the contract been actually performed.”





